

Response Under 37 C.F.R. § 1.193  
Appellant's Brief

Application No. 09/421,676  
Paper Dated: September 23, 2004  
Attorney Docket No. 964-991369



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application No. : 09/421,676 Confirmation No. 4487  
Applicant : BERNHARD GOTZ  
Filed : October 20, 1999  
Title : INDUSTRIAL TRUCK WITH A REAR WEIGHT AND  
INTERNAL COMBUSTION ENGINE  
Group Art Unit : 3619  
Examiner : Avraham H. Lerner  
Customer No. : 28289

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**GROUP 3600**

**MAIL STOP APPEAL BRIEF - PATENTS**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**SUPPLEMENTAL REPLY BRIEF**

Sir:

This Supplemental Reply Brief is submitted in response to the Supplemental Examiner's Answer mailed on July 23, 2004.

The following comments are in response to the Examiner's statements made in paragraphs 2 and 3 of the Supplemental Examiner's Answer.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Patricia M. Lynch

Typed Name of Person Signing Certificate

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1. Paragraph 2 of the Supplemental Examiner's Answer

The Examiner has reiterated his opinion that claim 1 is indefinite on the grounds that the specification allegedly does not clearly convey to one of ordinary skill in the art what is meant by "a rear weight separate from the frame and connected to the frame". The Examiner contends that the terms "separate" and "connected" are being used opposite to their conventional and art-accepted meanings.

Appellant disagrees that this phrase would be indefinite to one of ordinary skill in the art and that the disputed terms are being used opposite to their conventional and "art-accepted" meanings. Throughout the prosecution of this case, the Examiner has continually equated the claimed "rear weight", which has a distinct and specific meaning in the industrial truck art, to any structure or object at or near the rear of the vehicle, such as a portion of the rear frame or, in the Wilkes, Jr. reference, to a wheeled cart (power unit 12) carrying an engine 38. In order to address this overly broad interpretation by the Examiner, the Appellant specifically amended claim 1 to define that the "rear weight" is a separate and distinct component from the vehicle frame or the vehicle engine and that this separate component is "connected to" the frame. Appellant believes that one of ordinary skill in the industrial truck art in reading the specification and viewing the drawing figures would clearly understand the language of claim 1. The Examiner appears to be reading the language of claim 1 in a vacuum, completely ignoring the teachings of the specification and drawings.

2. Paragraph 3 of the Supplemental Examiner's Answer

The Examiner's initial comments regarding claims 2-6 and 8-19 again illustrate the overly broad interpretation by the Examiner. For example, claim 3 depends

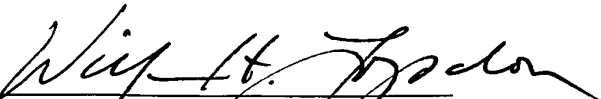
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from claim 1 and includes the limitation that the internal combustion engine is mounted by fastening means on the rear weight with the rear weight positioned between the engine and the frame (from claim 1) such that engine vibrations are transmitted directly to the rear weight. Appellant believes one of ordinary skill in the industrial truck art would clearly understand that mounting an engine on the rear weight, with the rear weight positioned between the engine and the frame, would directly transmit engine vibrations to the rear weight and not the frame. The Examiner again ignores the conventional and accepted meaning of the term "rear weight" in the industrial truck art and equates a wheeled power unit 12 having an engine 38 to the claimed structure. These two structures are neither equivalent nor even similar.

With regard to claims 6, 13, and 14, Wakana, either alone or in combination with Wilkes, does not teach or suggest a torque support that connects the internal combustion engine with the rear weight (as used in its conventional and art-accepted meaning).

Respectfully submitted,

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